

Application No.: 10/038,640
Response dated September 23, 2008
Reply to Final Office Action of June 24, 2008
Docket No.: 792-62 RCE II
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Remarks/Arguments:

Introduction

Claims 6, 76-81, 84-89 and 93 are pending. Claims 1-5, 7-75, 82-83 and 90-92 are canceled. Claims 6, 76 and 84 have been amended to further define and describe that the first and second tubular segments which alternate in order to tailor the body insertable tubular structure to support a curved body lumen, where the first segments prevent foreshortening of the structure upon deployment and the second segments prevent *in situ* kinking of the curved body lumen. Support for these amendments may be found, for example, in paragraph [0009], paragraph [0062], paragraph [0064], paragraph [0065], and paragraph [0069]. No new matter is introduced with these amendments. Entry of the claim amendments are respectfully requested

Section 103 Rejections

Claims 6, 76-81, 84-89 and 93 are rejected under 35 U.S.C. §103(a) as allegedly being obvious over U.S. Patent No. 6,860,900 to Clerc et al. (hereinafter “Clerc”) in view of U.S. Patent No. 5,575,818 to Pinchuk (hereinafter “Pinchuk”). Applicant respectfully traverses.

Clerc describes a stent having a fixation section engaged to the healthy tissue portion to provide substantial anchoring support for the diseased tissue portion. (Col. 5, line 20-26). The purpose of the fixation section is to anchor the fixation section, and thereby the stent, to a bodily lumen. As the Examiner admits, Clerc “fails to disclose the strands selectively formed to provide a plurality of first and second tubular segments.”

Pinchuk fails to teach or suggest a plurality of first and second tubular segments that are configured in an alternating sequence that is tailored to support a curvature of a body lumen. Rather, Pinchuk teaches that locking rings at the ends of the stent body in order to anchor the graft within a blood vessel. Although the reference discloses that locking rings may be along the body of the stent, Pinchuk fails to teach that such an arrangement may be a discrete

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alternating sequence, as set forth in the independent claims of the present invention. Also, Pinchuk discloses that the locking rings that have substantially larger diameters than the main body of its stent, in contrast to the language of the claims of the present invention.

Further, the Pinchuk figures 4, 5, 6, 7, and 8a-8c and the supporting specification disclose a straight tubular body that is supported by straight locking rings to anchor the stent, as disclosed, where the ratio of stent body length: locking ring length is about 9:1. Deployment of the Pinchuk configuration into a naturally curved body lumen would result in the problem cited and overcome by the present invention. The Application states in paragraph [0008] and [0009], with reference to FIG. 2: "practitioners have encountered problems when using these prostheses in body lumens having natural curvature" as "FIG. 2 reveals the tendency of stent 3 to straighten the naturally curved vessel, causing a kinking in the vessel [] near the ends of the stent... which result[s] in the unwanted narrowing of the vessel." The amended independent claims 6, 76, and 84 are directed to a discrete plurality of first tubular segments and second tubular segments in an alternating sequence that is tailored to fit the natural curvature of a body lumen, so as to prevent both the foreshortening of the stent upon deployment and kinking caused by the straightening of a stent in a naturally curved the body lumen. Thus, the currently amended independent claims are not taught, suggested, or disclosed by Pinchuk and Clerc, taking individually or in combination. Independent claims 6, 76, and 84 are directed to a new an unobvious result, and as such, are patentably distinct over the applied art.

It is impermissible during examination for an Examiner to pick and choose from a reference only so much that supports the alleged rejection. *Bausch & Lomb, Inc. v. Barnes-Hind, Inc.*, 230 U.S.P.Q. 416, 419 (Fed. Cir. 1986). Rather, in establishing a prima facie case of obviousness, the cited references must be considered for their entirety of teachings. *Id.* The Examiner has admitted that Clerc fails to teach a plurality of first and second segments. Further, Pinchuk discloses locking rings located at the ends of a tubular stent, with larger locking ring diameters than the body of the tubular stent, where the locking rings anchor the

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stent, and where the locking ring to stent body length ratio is on the order of about 1 : 9. Further, the Pinchuk configuration will exhibit the problem that is cited and solved by the present invention, as discussed. Therefore, taking these reasons together, it is only through hindsight reconstruction that the Examiner attempts to reach the present invention through the combined teachings of Clerc and Pinchuk. It is also well established, however, that hindsight reconstruction of a reference does not present a *prima facie* case of obviousness, and any attempt at hindsight reconstruction using Applicants' disclosure is strictly prohibited. *In re Oetiker*, 24 U.S.P.Q.2d 1443, 1445-46 (Fed. Cir. 1993). As Clerc and Pinchuk, individually or in combination, fail to teach or suggest the recited prosthesis comprising, *inter alia*, a plurality of discrete first tubular segments and a plurality of discrete second tubular segments in an alternating sequence tailored to support a curvature of a body lumen, as set forth in independent claims 6, 76 and 84, any attempt to modify the teachings of Clerc and/or Pinchuk to the same is clearly hindsight reconstruction.

Therefore, reconsideration and withdrawal of the rejection of claims 6, 76-81, 84-89 and 93 under 35 U.S.C. §103(a) are respectfully requested.

Summary

Therefore, Applicants respectfully submit that independent claims 6, 76 and 84, and all claims dependent therefrom, are patentably distinct. This application is believed to be in condition for allowance. Favorable action thereon is therefore respectfully solicited.

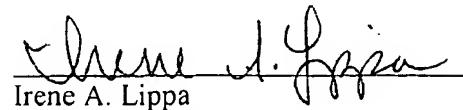
Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number given below.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account

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No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Respectfully submitted,



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